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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1935

No. [redacted] 2

JEAN BOURDIEU,

Petitioner,

vs.

PACIFIC WESTERN OIL COMPANY (a corporation), KETTLEMAN OIL CORPORATION (a corporation), KETTLEMAN NORTH DOME ASSOCIATION (a corporation), FRANK KENNEDY and FRANKLIN R. KENNEY,

Respondents,

THOMAS M. CRUM and C. G. SMITH, et al.,

Defendants.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

HERBERT W. CLARK,
Crocker Building, San Francisco, California,
FELIX T. SMITH,
Standard Oil Building, San Francisco, California,
Solicitors for Respondents, Pacific Western Oil Company and Kettleman Oil Corporation.
GEORGE W. NILSSON,
Richfield Building, Los Angeles, California,
Solicitor for Respondent, Kettleman North Dome Association.
HERMAN PHLEGER,
Crocker Building, San Francisco, California,
Solicitor for Respondent, Frank Kennedy.
W. J. KENNEY,
Financial Center Building, San Francisco, California,
Solicitor for Respondent, Franklin R. Kenney.
MORRISON, HOHFELD, FOERSTER,
SHUMAN & CLARK,
BOICE GROSS,
Crocker Building, San Francisco, California,
PILLSBURY, MADISON & SUTRO,
Standard Oil Building, San Francisco, California,
ORRICK, PALMER & DAHLQUIST,
Financial Center Building, San Francisco, California,
BROBECK, PHLEGER & HARRISON,
Crocker Building, San Francisco, California,
Of Counsel.

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

STATEMENT OF THE CASE.

(The opinion of the Circuit Court of Appeals is printed in the Record at pages 364-380, and is reported in 80 F. (2d) 774.)

Because of certain omissions and inaccuracies in the statement of the case and the facts given by petitioner in his petition for a writ of certiorari to the

United States Circuit Court of Appeals for the Ninth Circuit and in his brief in support thereof, concerning matters considered important, respondents here set out a brief statement of the case.

Petitioner, Jean Bourdieu, made a homestead entry of the land here involved on March 6, 1919, under the non-mineral land laws (Act of February 19, 1909; 35 Stat. 639). (R. 291-297.) This entry was made expressly "subject to the provisions and reservations of the Act of July 17, 1914". (R. 291 and 294.) On October 7, 1925, a patent for the land was issued to petitioner, excepting and reserving, however, "to the United States all the oil and gas" in the lands so patented. (R. 300.)

The land involved, the North half (Lots 1, 2, the East half of the Northwest quarter and the Northeast quarter) of Section 30, Township 21 South, Range 17 East, M. D. M., was on December 30, 1910, "withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States", by President Taft's Order of Withdrawal of that date. (R. 286.) This Order has never been revoked in so far as it affects the land here involved. By virtue of the permissive effect of the Act of July 17, 1914 (38 Stat. at L. 509, U. S. C., title 30, secs. 121, 122, 123), entitled "An act to provide for the agricultural entry of lands withdrawn, classified or reported as containing phosphate, nitrate, potash, oil, gas, or as-

phaltic minerals",[1] this land so withdrawn was opened to agricultural or surface entry under the homestead laws, provided the applicant for such entry made his entry with a view to obtaining title with a reservation to the United States of the minerals on account of which the land had been "withdrawn or classified or reported as valuable". Obviously, if that Act had not been passed, the petitioner could not have made any entry at all on the lands here involved because of the effect of the Taft Withdrawal Order of December 30, 1910.

The respondents Kettleman Oil Corporation, Ltd., and Pacific Western Oil Company are lessees of the United States. The lease was issued October 4, 1929, under the Leasing Act of February 25, 1920 (c. 85, 41 Stat. at L. 437, U. S. C., title 30, secs. 131 et seq.), and it includes the right to recover the oil and gas under the lands here involved. The prospecting permit out of which the lease grew was issued to one Thomas M. Crum on May 28, 1921, and by various assignments came to be held by the present lessees. The petitioner filed his bill of complaint in the District Court for the Southern District of California, Northern Division, July 1, 1931. In brief, the bill is based on the theory that under Section 20[2] of the Leasing Act of February 25, 1920, petitioner was given a preference right to a prospecting permit; that he could be divested of that right only by service on

1. This statute is set out in the Appendix, pages i-iii.
2. The pertinent portion of this section is set out in full at page 15 of this brief.

him personally of a written notice of application by another for a prospecting permit, and that since there was no such written notice served on him personally, he is entitled, at this date, to assert his rights against respondent lessees and have the lease from the United States held by such lessees conveyed by them to him in so far as it covers the oil and gas under the lands embraced by his surface patent. The bill alleges no relationship, by contract or otherwise, between petitioner and respondents, or any of them. It does not allege that the petitioner ever made application to the Land Department for a prospecting permit or lease and the proof adduced at the trial shows that no such application was ever made by petitioner. The bill does not allege that any of the respondents fraudulently prevented or attempted to prevent petitioner from obtaining from the United States either a prospecting permit or an oil and gas lease covering the lands involved. As found by the trial court, the record shows that "No defendant ever fraudulently or otherwise prevented complainant herein from obtaining from the United States of America any prospecting permit or any oil and gas lease" on the premises involved, "nor did the complainant herein ever apply for or attempt in any manner to obtain from the United States of America an oil and gas prospecting permit or lease relating to the said lands." (R. 318.)

For the first time the petitioner claims that respondents were guilty of fraud, terming them in his brief in support of his petition for a writ of certi-

orari, a "subsequent fraudulent permittee and lessee of the United States" (petition, p. 5; petitioner's brief, p. 10) and claiming that "The permit to prospect was obtained by filing false affidavit as to the facts when the adverse application was made". (Petition, p. 6.) The truth is that petitioner's bill of complaint makes no allegation of fraud against the respondents. Furthermore, no claim of fraud was made during the trial, or at any other time, until the filing in this court of the petition for a writ of certiorari. Indeed, the District Court found as a part of its findings of fact that "The complainant herein makes no claim that any fraud was practiced or attempted to be practiced upon him by the defendants herein, or any of them, *in connection with any matter or thing pertaining to this suit,* nor does the complainant claim that there was at any time any fiduciary relationship existing between him and the defendants, or any of them". (R. 317.) And in the memorandum of decision of the trial court (R. 250-251), it is said:

> "There is no claim of any fraud. There is no contention that at any time any fiduciary relationship existed between complainant and any of the defendants named in the Bill. It is admitted that Bourdieu has not at any time attempted to obtain from the United States an oil and gas prospecting permit or an oil and gas lease relating to the lands that he claims in this suit, and the complainant does not assert that any of the defendants fraudulently prevented him from obtaining from the Government either a prospecting

permit or an oil and gas lease on the premises that are involved herein."

In view of the indisputable facts, it is, to say the least, surprising that petitioner should so frame his petition for a writ of certiorari and brief in support thereof as to give the clear impression that the bill charges fraud against the respondents.

Respondents filed motions to dismiss the bill in the District Court, stating, as one of the grounds of the motions, that the United States was a necessary party and claiming that the court must notice judicially the facts which show the interest of the United States. On October 20, 1932, the District Court denied the motions, not, as stated by petitioner, upon the authority of *Witbeck v. Hardeman*, 51 F. (2d) 450 (see page 4 of petition for writ of certiorari), but "Because of doubt existing as to how far this court may judicially know public and geographical matters on a motion to dismiss a bill in Equity without a hearing on the merits * * *". (R. 21.)

The District Court heard the case on the merits and held that "Section 30 in controversy here was actually not only wholly withdrawn and detached from the existing public domain by the Presidential edict of December 30, 1910, but * * * was also classified as oil land by such withdrawal order" (R. 255); that the land being both withdrawn and classified as oil land at the time of petitioner's homestead entry, and the entry having been made with a reservation of the mineral, "there is no preference right under the Leasing Act. This interpretation appears to have

been the one established by the regulations of the General Land Office as shown by Circular No. 672 in evidence" (R. 259); and, in addition, that "the admitted delay of about three years by Mr. Bourdieu after his knowledge of the existence of the defendants' oil lease covering his homestead, speaks forcefully against him in a court of equity. * * * His claim is stale and inequitable" (R. 259, 260); and that "The complainant has been and is guilty of gross laches in the assertion of his claim". (R. 330.)

On appeal, the Circuit Court of Appeals for the Ninth Circuit stated (R. 378) that the United States was not made a party to the suit, that it is conceded that the United States is the owner of the oil and gas deposits, that two of the respondents have a permissive right to remove those deposits by reason of being lessees of the Government, and held[3] that neither the Circuit Court of Appeals nor the District Court had jurisdiction and that, therefore, the motion to dismiss should have been sustained in the District Court. A petition by Bourdieu for a rehearing in the Circuit Court of Appeals for the Ninth Circuit was denied by that court. (R. 381.)

PETITIONER HAS STATED NO VALID REASONS FOR THE GRANTING OF A WRIT OF CERTIORARI BY THIS COURT.

Petitioner has set forth several matters which he says are reasons for the granting of the writ of cer-

3. The opinion is printed in the Record at pages 364-380, and is reported in 80 F. (2d) 774.

tiorari by this court. It is believed that their invalidity will be apparent.

(1) The first reason given by petitioner is that the decision of the Circuit Court of Appeals in the case at bar is in direct conflict with the decision of the Circuit Court of Appeals for the Fifth Circuit in *Witbeck v. Hardeman,* 51 F. (2d) 450, affirmed by this court in *Hardeman v. Witbeck,* 286 U. S. 444.

Petitioner claims that the facts of the *Witbeck* case are, "from a *stare decisis* viewpoint", identical with the facts in the case at bar. It is submitted that the distinction between the *Witbeck* case and the one at bar is plain. In that case both parties had applied to the Land Department for a permit to prospect and the plaintiff therein claimed that the Secretary of the Interior had decided wrongly as between the two applicants. Indeed, the court states that in deciding the case it merely "succeeds to the Secretary in identifying that choice" (51 F. (2d) 453) (that is to say, the choice of the proper permittee as between two applicants where that choice is dictated unequivocally by law). The court states at page 453 of the report that the application of Witbeck (who was the prevailing party in the case) "was filed November 12, 1923, perfect in form and substance, and accompanied by required fees". Hardeman, who claimed the preference right to a permit, did not swear to his application and did not pay his fees within the thirty days during which a preference was by law granted to him, and for those reasons the Secretary denied his application. It is obvious that this is quite different

from a case of the court undertaking to make a decree where there has been no application in the Land Department by one of the contending parties, for, *non constat* but that the Secretary would have granted, or would now grant, the application of petitioner for a permit or lease. For a court to make a decree in the case at bar would interfere directly with the function of the Land Department, which, because of the failure of petitioner to make application, has never had the opportunity to pass upon his claim and has never had an opportunity to decide between applicants. In the *Witbeck* case the court was merely asked to correct an alleged erroneous decision of the Secretary of the Interior who had exercised his function in making that decision. (In point of fact, the court affirmed the action of the Secretary.) In the case at bar the court is asked to take over the duties of the Land Department before that Department has had any opportunity to perform its function of deciding between two claimants. Petitioner seeks to have the court do away with the necessity of application to the Land Department by petitioner and to deny all control, all jurisdiction, and all discretion to the Secretary of the Interior.

(2) The second "reason" advanced for the granting of a writ of certiorari is that the decision of the Circuit Court of Appeals herein is in direct conflict with the decision of the Circuit Court of Appeals for the Tenth Circuit in *Skeen v. Lynch*, 48 F. (2d) 1044. (Certiorari denied, 284 U. S. 633.) In that case the Circuit Court of Appeals for the Tenth Circuit did

not directly pass upon the question of its jurisdiction to consider the second count of the bill in the absence of the United States. The holding of the court on the second count is merely that "The court (referring to the District Court) did not err in dismissing the second count". (p. 1047.) It is true that the Circuit Court of Appeals discussed the question of whether plaintiff therein had a preference right to a permit to prospect, but it is also true that the subject of jurisdiction was not discussed specifically, and it does not necessarily follow from the fact that the court took cognizance of the controversy that it passed on the question of jurisdiction. As stated by Judge Haney in the opinion of the Circuit Court of Appeals in the case at bar:

> "Although in *Skeen v. Lynch* (C. C. A. 10), 48 F. (2d) 1044 (Certiorari denied 284 U. S. 633, 76 L. ed. 539, 52 Sup. Ct. 17), in the second cause of action relating to a preference right under the Leasing Act, the jurisdictional point was not raised, it was held with respect to that cause of the bill that the preference right given by the Leasing Act applied only to entries made without reservation of the mineral rights."[4]

(3) It is next stated by petitioner that the Circuit Court of Appeals for the Ninth Circuit has decided an important Federal question of law in a manner in conflict with the decision of this court in

4. It will be noted that the actual holding of the court in the *Skeen* case is directly in accord with the contention of respondents concerning the merits of the case at bar. The court there held that a preference right was given only to such entrymen as made entry upon the land without exception or reservation of the mineral deposits and in the expectation of receiving title by patent to the whole fee.

Waterman v. Canal-Louisiana Bank Co., 215 U. S. 33. Petitioner, at page 18 of his brief in support of the petition for a writ of certiorari, purports to quote from the opinion of this court in the *Waterman* case. While the words given by petitioner may, upon search, be found in the opinion of the court, petitioner has apparently built up the quotation from several paragraphs of the opinion, without giving the context of the paragraphs from which the words are chosen. For example, one sentence which petitioner purports to quote at page 18 of his brief, there reads:

> "* * * If the court can do justice to the parties before it *without injuring* absent persons, it will do so."

The matter as it appears in the opinion, is (p. 49):

> "If the Court can do justice to the parties before it without injuring absent persons it will do so, *and shape its relief in such a manner as to preserve the rights of the persons not before the Court.* If necessary, the Court may require that the bill be dismissed as to such absent parties, and may generally shape its decrees so as to do justice to those made parties, without prejudice to such absent persons."

Obviously, the case is in no way in conflict with the decision in the one at bar. The *Waterman* case had nothing whatsoever to do with the question of a court's jurisdiction over public land of the United States while that jurisdiction is vested in the Land Department. The rule of the *Waterman* case could not be applied to the case at bar, for the interests of the United States in the case at bar are in effect iden-

tical with the interests of respondent lessees, the respondents claiming no interest other than as lessees of the United States, and so, of course, the court could not segregate and preserve separately the rights of the United States. Any decree for petitioner would necessarily affect the rights of the United States.

(4) Petitioner next claims that the decision of the Circuit Court of Appeals for the Ninth Circuit "denies the affirmation of specific jurisdiction conferred upon federal district courts by Section 31 of the Leasing Act". That section is quoted at page 21 of petitioner's brief, and a mere reading of the section will disclose its inapplicability. The United States District Courts are by that section given jurisdiction to *forfeit and cancel* a lease by an appropriate proceeding therein "whenever the lessee fails to comply with any of the provisions of said sections of the lease, or of the general regulations promulgated under said sections and in force at the date of the lease".[5] It should first be noted that petitioner in the case at bar has not asked that the lease be "forfeited and cancelled"; secondly, it seems obvious that the provisions contained in Section 31 of the Leasing Act of February 25, 1920, are for the benefit of the United States acting through its Secretary, or at the very most, for the benefit of someone who has a right to have a lease "forfeited or cancelled".

(5) Petitioner also asserts that the issue in this case presents an important question of Federal law which has not been directly decided by this court. It

5. This section is printed in the Appendix, page iv.

is submitted that the principle of law involved in this case, which was followed by the Circuit Court of Appeals for the Ninth Circuit in its opinion, is a principle well settled by the decisions of this court. This principle is established beyond question by the cases of

Louisiana v. Garfield, 211 U. S. 70;
Oregon v. Hitchcock, 202 U. S. 60;
Wilson v. Elk Coal Co., 7 F. (2d) 112.

In the cases above cited it was held that the courts had no jurisdiction in cases where the title was held or claimed by the United States.

(6) Although petitioner does not, in his petition for a writ, refer to the case of *Alaska Consolidated Oil Fields v. Rains,* 54 F. (2d) 868, he does claim in his brief in support of the petition that the decision of the Circuit Court of Appeals in the instant case is in conflict with that of the same circuit in the *Alaska* case. An examination of the facts of that case will show that there is a fundamental distinction between it and the case at bar, and that there is, in fact, no conflict in the decisions. In that case the action was brought to foreclose mechanics' liens for work done by the plaintiff in connection with the drilling of oil wells upon lands over which the defendant held a permit from the United States to prospect for oil and gas. It was held that the action would lie because the permit was an "interest in land" subject to mechanics' liens as prescribed by the laws of Alaska. The court said at page 868:

> "It is clear that the decree of foreclosure would not be binding in any way upon the United States, and that the only interest which could be sold

under the decree would be the interest of the appellants in and to the land in question. * * *"

In the *Alaska* case *all the decree purported to do was to place the plaintiff, who was seeking to enforce a mechanic's lien, in a position to ask that he be made the permittee,* and all that was decided was that the prospecting permit was a property right subject to mechanics' liens under the Alaska law. In the case at bar the petitioner has always had, and now has, the right to apply to the Land Department for a permit or a lease, but he has never seen fit to do so. In effect, *petitioner seeks to have the court decree that he is the lessee, and seeks a decree directing conveyance of the lease to him.* In the *Alaska* case there was a definite relationship, established by the law giving plaintiff his mechanic's lien, between the plaintiff and the defendant who held the permit. Only by enforcing that relationship could plaintiff be in a position to seek to be made the permittee, and all the court did was to enforce that relationship. In the case at bar there is no relationship of any kind between petitioner and respondents and nothing has been done by respondents to give petitioner a right to proceed against them. There is no contract between petitioner and respondents, or any of them, and no other relationship between them concerning the North half of Section 30.

While it is recognized that the merits of this case are not before this court on a petition for a writ of certiorari, in view of the fact that petitioner has quoted a portion of Section 20 of the Leasing Act of

February 25, 1920 (p. 11 of petitioner's brief), which section is controlling in the case at bar, and of the further fact that petitioner insists that "In determining the question of jurisdiction, the facts set up by the bill must be considered true". (p. 23 of petitioner's brief), it is felt that it will not be out of place to append hereto a brief discussion of Section 20 of the Act of February 25, 1920, and of the essentials of the case itself. This discussion will be found in the Appendix.[6] We point out here that petitioner, in quoting from Section 20 of the Leasing Act, omits the part thereof which is the key to the merits of this case. The pertinent portion of that section reads:

> "In the case of lands bona fide entered as agricultural, and not withdrawn or classified as mineral at the time of entry, but not including lands claimed under any railroad grant, the entryman or patentee, or assigns, where assignment was made prior to January 1, 1918, if the entry has been patented with the mineral right reserved, shall be entitled to a preference right to a permit and to a lease, as herein provided, in case of discovery; and within an area not greater than a township such entryman and patentees, or assigns holding restricted patents may combine their holdings, not to exceed two thousand five hundred and sixty acres for the purpose of making joint application. * * *"
>
> *U. S. Code, title 30, section 229* (cited by petitioner at p. 11 of his brief as Section 214).

The part underlined above is the part omitted by petitioner, and, as noted, contains the key to the whole controversy on the merits.

6. See Appendix, pages vi and viii.

CASES CITED BY THE CIRCUIT COURT OF APPEALS SUSTAIN ITS DECISION.

Petitioner asserts that the cases cited by the Circuit Court of Appeals for the Ninth Circuit to sustain its decision herein are not applicable. He argues that in the case at bar petitioner does not seek title, nor does he seek to have the court dispose of the land to the injury of the United States. Petitioner states that he "seeks merely to be given the contract to prospect as to his homestead, which the United States, speaking through the Congress, provided that he should have".

Thus petitioner seeks to distinguish the case at bar from the cases of

Wilson v. Elk Coal Co., 7 F. (2d) 112;
Proctor v. Painter, 15 F. (2d) 974; and
Skeen v. Lynch, 48 F. (2d) 1044. (In so far as the first count of the bill therein is concerned.)

It is only necessary to point out that in the *Wilson* case the plaintiff prayed that the appellee, who was only a lessee of the Government, be declared a trustee for him. Thus it is apparent that Wilson sought not the title to the coal, but to be substituted as a lessee, as petitioner does in the instant case. Yet the court held that the action would not lie.

The fact is that the prayer of the complaint in the case at bar shows that petitioner seeks far more than "merely to be given the contract to prospect as to his homestead". (See p. 23 of petitioner's brief.) He seeks, as shown by that prayer, a decree directing "That the defendant, Pacific Western Oil Company,

be directed to forthwith execute and deliver to this complainant a good and sufficient conveyance of said lease, in so far as it affects the premises hereinabove described,". (R. 13.) In the face of this prayer petitioner contends that the case is not one in which the United States has an interest. It is undisputed that the title to the oil and gas in the premises involved is in the United States. It is undisputed that the United States has given to respondents the right to remove said oil and gas. It is equally clear that the rights of the respondents depend entirely upon the right of the United States and that any decree affecting respondents' interest in the oil and gas must affect the interest of the United States, for, out of the interest of the United States, grows the interest of the respondents. In this connection the court is referred to the case of *South Penn Oil Co. v. Miller,* 175 Fed. 729, at page 736, holding lessors of oil property to be indispensable parties to a suit to determine the title to property leased from them.

Petitioner seeks to have the court award to him the right to remove the oil and gas under the North half of Section 30, Township 21 South, Range 17 East, M. D. M. The title to that oil and gas in place in the premises is in the United States. The rights of the respondents, the lessees, are wholly subordinate to and in privity with those of the United States. Thus, any decree which affects respondents must affect also the paramount title.

In order to show why the courts do not take jurisdiction of cases such as the one at bar, where title is held or claimed by the United States, it is only neces-

sary to note what would happen if petitioner's prayer should be granted. A decree for petitioner would result in the petitioner becoming the lessee of the United States of the oil and gas contained in 320 acres (the area over which petitioner claims that he had a preference right to a permit to prospect). It is obvious that this would affect the United States and that the making of such a decree would interfere directly with the functions of the Land Department and the Secretary of the Interior. To illustrate, suppose that petitioner had actually received a permit to prospect—he would have received a permit covering 320 acres, the area covered by his surface patent. Had petitioner made a discovery upon that supposed permit area, he would have been entitled, as a matter of right, to a lease covering only 160 acres. Concerning the other 160 acres within the supposed permit area, the granting or refusal of a lease would lie entirely within the discretion of the Secretary of the Interior. The Secretary might refuse to grant a lease for more than 160 acres and there could be no complaint by the permit holder. Further, even if the Secretary did grant the lease for the full 320 acres, the royalty basis on the additional 160 acres might be entirely different than it now is, and that, too, is by law to be determined by the Secretary of the Interior acting in his discretion. (See Section 14, Leasing Act of February 25, 1920.)[7] Will the court supersede the function of the Secretary in exercising that discretion which is vested in him by law and bring about a result whereby, with no opportunity afforded the Secre-

7. This section of the statute is printed in the Appendix, pages v and vi.

tary to make any decision or exercise any discretion, the petitioner would be given a lease over an area twice as large as he would be entitled to as a matter of right if he had in the first place had a prospecting permit? It is submitted that the court should not, and will not, by a decree interfere with the function of the Land Department in determining whether or not a lease would be granted to appellant.

CONCLUSION.

It is submitted that there is no conflict existing in the Circuit Court of Appeals concerning the question of jurisdiction in the case at bar; that there is no conflict between the decision of the Circuit Court of Appeals for the Ninth Circuit in the instant case and the decisions of this court, and that, on the contrary, the decision of the Circuit Court of Appeals in the instant case is in harmony with the decisions of this court concerning the questions of jurisdiction and the necessity of the presence of the United States as a party defendant; that there is no affirmation of specific jurisdiction of the District Courts conferred by Section 31 of the Leasing Act of February 25, 1920, which is applicable in any way to the case at bar, as claimed by petitioner; that the issue in this case does not present any question of Federal law which has not been well settled by the decisions of this court; and that the decision herein of the Circuit Court of Appeals for the Ninth Circuit is consonant with sound and established principles of law.

Respondents respectfully submit that this court should decline to issue a writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit in this case.

Dated, San Francisco, California,
March 18, 1936.

Respectfully submitted,
HERBERT W. CLARK,
FELIX T. SMITH,
Solicitors for Respondents, Pacific Western Oil Company and Kettleman Oil Corporation.
GEORGE W. NILSSON,
Solicitor for Respondent, Kettleman North Dome Association.
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ORRICK, PALMER & DAHLQUIST,
BROBECK, PHLEGER & HARRISON,
Of Counsel.

(Appendix Follows.)

Appendix

ACT OF JULY 17, 1914, 38 STAT. 509, U. S. C. TITLE 30, SECS. 121, 122, 123.

An Act to Provide for Agricultural Entry of Lands Withdrawn, Classified, or Reported as Containing Phosphate, Nitrate, Potash, Oil, Gas, or Asphaltic Minerals.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for those deposits, shall be subject to appropriation, location, selection, entry, or purchase, if otherwise available, under the non-mineral land laws of the United States, whenever such location, selection, entry or purchase shall be made with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same; but no desert entry made under the provisions of this Act shall contain more than one hundred and sixty acres: **Provided,** That all applications to locate, select, enter, or purchase under this Section shall state that the same are made in accordance with and subject to the provisions and reservations of this Act.

Sec. 2. That upon satisfactory proof of full compliance with the provisions of the laws under which the location, selection, entry, or purchase is made, the